IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6656,6283 and 8767 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

VICTOR F PARMAR

Versus

ELECON ENGINEERING LTD

Appearance:

MR TR MISHRA for Petitioner

MR KM PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

It is well established that the labour court should not mechanically use the words "punishment being disproportionate to the charges". The labour court is required to give reasons as to why the punishment is grossly disproportionate. The discretionary power cannot be equated with the power of veto. Once the labour court evaluates the gravity of misconduct and considers the

past record of service, it is true that the order of the labour court modifying the order of punishment or moulding the relief under section 11A of the ID Act should not be interfered with by this Court. Such is not the case at hand.

It is well established that section 11A of the ID Act empowers the adjudicator under the said Act to substitute or mould the punishment meted on the employee by the employer in certain cases and these are the discretionary powers to be invoked in the facts and circumstances of each case. When such powers are being invoked, the adjudicator is required to examine the connected parameters namely nature of charge proved, length of service of the employee and the past record and social as also the family back ground of the workman, compelling circumstances for committing the misconduct etc. Recent decision of the apex Court in the case of UP State Road Transport Corporation and others versus Musai Ram and others reported in 1999 (2) CLR 312 is supporting the view.

Under section 11A of the Industrial Disputes Act, 1947, ("the ID Act" for short), the industrial tribunal or the labour court is not vested with unguided power to set aside the justified order passed by the Management. The power under section 11A of the ID Act has to be exercised judiciously and the tribunal or the labour Court as the case may be can interfere with the decision of the management under section 11 A of the ID Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of the guilt established or alleged against the delinquent workman. In number of decisions, this court has time and again held that misappropriation, dishonesty and theft, if held to be established or proved, would be the major punishment and normally, dismissal order passed by the competent disciplinary authority should not be interfered with by the labour court or the industrial tribunal under section 11 A of the ID Act.

Take for instance, the workman that put in 29 years of continuous service and had unblemish record, in 30th year of his service, he commits defalcation of the public or private money or fabricates also records to conceal the misappropriation or the theft. He commit only once. Does it mean that he should not be inflicted with the major punishment of dismissal but he should be allowed to continue in service to enable him to get his full pension ? Obviously, in the aforesaid situation, the answer would be in the negative. Therefore, a single

act of corruption or theft or dishonesty is sufficient to warrant and award the major punishment of dismissal under rule as a gravest act of delinquency.

It is also equally true that just a road roller cannot be brought to crush a fly so also the extreme penalty of dismissal cannot be inflicted for misconduct which is not equally grave or severe. It would, thus, depend on the facts of each case. The consequences of removal and/or dismissal from service are severe, some times, entire family is ruined because another job or work may not be easy to find out and therefore, it is all the more necessary that the punishment of removal/dismissal should be inflicted sparingly and in cases which could be described as a gross such as receiving illegal gratification, misappropriation or defalcation of public or private funds, theft, dishonesty, moral turpitude, gross abuse or misuse of power and/or authority.

In the present case, the award passed by the labour court, Nadiad in Reference No. 139 of 1983 dated 3rd June, 1989 in respect of workman Victor F.Parmar and the award passed by the labour court Nadiad in Reference No. 677 of 1983 dated 9.1`1.1989 in respect of the workman Babu SHankar Adivasi are challenged by the petitioner Co. before this Court by filing the aforesaid petitions namely Special Civil Application No. 6283 of 1989 and 8761 of 1989. Both the petitions are admitted by issuing rule thereon and ad interim stay was granted by this court on 21.12.1989 in special civil application no. 8761 of 1989 and in special civil application no. 6283 of 1989, rule has been issued and the petition was ordered to be heard with special civil application no. 6656 of 1989 and the ad interim relief was granted on 9.9.1991.

Petition being special civil application No. 6656 of 1989 is filed by the workman Victor F. Parmar challenging the very same award passed by the labour court Nadiad in reference no. 139 of 1983 dated 3.6.89 and, therefore, since the petitions are involving common questions of law and facts, they are decided by this common judgment.

The facts of the present two petitions namely special civil application no. 6283 of 1989 and 8761 of 1989 filed by the petitioner Co. against the respondent workman challenging the award passed by the labour court in reference No.139 of 1983 and 677 of 1983 against the workman Victor F. Parmar and Babu Shankar Adivasi. In

both the awards, the labour court has come to the same conclusion and confirmed the punishment of dismissal which has been justified by the petitioner co. even though the labour court has granted Rs. 20,000/- by way of rehabilitation and keeping in view the aspect of social justice. That award of the labour court has been challenged by the petitioner Co. as also the workman by filing the aforesaid petitions.

The facts of the present case are that the petitioner Co. has issued chargesheet to both the workmen for committing theft of the Company's property and after serving the chargesheet to the workmen, departmental inquiry was held against them and ultimately, order of dismissal was passed against the workmen herein and in one case, the workman Victor F. Parmar was dismissed by order dated 1.5.80. It was alleged by the Co. against both the workmen that they have committed theft of the property of the company and those allegations were found to be proved and ultimately, both the workmen were dismissed from service.

Said order of dismissal were challenged by both the workmen before the labour court, Nadiad by raising industrial dispute before the labour Court. Before the labour court, statement of claim was filed by the workmen and the petitioner company filed written statement and thereafter, the workmen were examined and the witness of the petitioner co. was also examined. Both the parties had produced necessary documents on record. After considering the evidence on record, the labour court has come to the conclusion that the departmental inquiry which was held against the workmen was legal and valid and the findings recorded by the competent authority were also legal and valid. The labour court has also considered the written admission of the workmen for committing theft of the company's property. Thereafter, the labour court has examined the question of punishment while exercising the power under section 11A of the ID Act. The labour court has, in terms, come to the conclusion that the misconduct of theft has been found to have been proved on record and theft of Rs. 6900/- was committed by the workman and, therefore, it is not in the interest of justice to reinstate the workman in service because if such persons are reinstated in service, it would definitely adversely affect the discipline amongst the workmen who are working in the company. Not only that, it would amount to giving premium to such delinquents who have committed such serious misconduct while working in the petitioner company. Therefore, the labour court has thought it fit not to exercise the power

under section 11A of the ID Act in favour of the workmen and also decided that it is not a case in which some lesser punishment can be imposed but having come to such conclusion that looking to the misconduct established against the workmen, punishment of dismissal from service is justified, however, the labour court has ordered to pay Rs. 20,000/- to the workmen by way of rehabilitation and considering the aspect of social justice in his mind. Said award has, therefore, been challenged by the petitioner Company before this Court in so far as it relates to an amount of Rs. 20,000/- to be paid to the workman for rehabilitation.

Learned advocate Mr. Patel appearing for the petitioner Co. has pointed out that it is a case of gross misconduct which does not require any interference from the labour court while exercising the powers under section 11A of the ID Act. He has further submitted that the power under section 11A of the ID Act cannot be exercised by the labour court when a punishment of dismissal from service is justified by the employer before the labour Court and the Labour Court is also convinced that the employer is justified in passing such an order of punishment. Thus, according to Mr. Patel, unjustified order of punishment is the condition precedent for exercise of powers under section 11A of the ID Act, by the labour court. He has further submitted the labour Court has no jurisdiction to direct the management to pay to the workman an amount of Rs.20,000/on the ground of social rehabilitation and social justice. It amounts to misplaced sympathy towards the workman who is, otherwise, not entitled to any relief from the labour Court and, therefore, according to Mr. Patel, the labour court is not justified in directing the Company to pay to the workman an amount of Rs.20,000/- on the ground of social rehabilitation and social justice. Mr. Patel has relied on the decision in case of Kerala Solvent Extractions Ltd. versus Unnikrishnan, reported in 1994 (1) CLR 820 and the decision reported in AIR 1997 SC 365; AIR 1982 SC 673. I have considered the decisions cited by Mr. Patel at the Bar. In the case of Kerala Solvent Extractions Ltd. (supra), it has been held in para 9 as under:

"9. We are inclined to agree with these submissions, In recent times, there is an increasing evidence of this, perhaps, well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by

> the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Epensive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

In the decision of the apex court reported in AIR 1997 SC 3659, it has been held that mere acquittal of the Government employee does not automatically entitle the Government servant to reinstatement in service. On the contrary, it would be open for the appropriate competent authority to take the decision whether the inquiry into the misconduct is required to be held before directing reinstatement or appropriate action should be taken as per the law, if otherwise, available. It has further been held that the direction of payment of compensation amounts to premium for misconduct. It was a case of cash clerk in Delhi Milk Scheme who temporarily misappropriated the funds on more than one occasions. Prosecution was filed against the workman and during the pendency of the prosecution, order of termination of his service was passed by the disciplinary authority. In the said case, it has been declared by the Delhi High COurt that the order of termination of the cash clerk was illegal and consequently, instead of reinstating him in service, the Court directed the employer to pay him compensation in the sum of Rs. 2,50,000/- and the said order of the Delhi High Court was challenged by the employer before the Supreme Court by filing the SLP. In the said case, it was held by the apex court that the Division Bench of the Delhi High Court has erred in directing payment of compensation which amounts to premium for misconduct and the appeal was, thus, allowed by the apex court by setting aside the judgment of the Delhi High Court. In case reported in AIR 1982 SC 673, the apex court was examining a case as to whether the High COurt has jurisdiction to interfere with the findings of the labour court in exercise of the powers under section 11A of the ID Act and whether the High

Court has jurisdiction to interfere with such findings while exercising extra ordinary powers under Article 226 and/or 227 of the Constitution of India. It was held by the apex court in the said decision that the award passed by the tribunal was vitiated by misconception of law involved in that case and the High Court was fully justified in exercising the powers and jurisdiction vested in it under Article 226 and/or 227 of the Constitution of India. It was also held by the apex court that the tribunal has committed error in failing to appreciate the confession made by the appellant in the presence of the witnesses and to the higher officer.

Recently, the apex court has considered the question in respect of the power under section 11A of the ID Act of the labour Court and the High Court in decision in case of Andhra Pradesh State Road Transport Corporation versus K. pochaiah and Anr. reported in 1999 (2) LLJ 976. The apex Court held that once the labour Court, after considering the evidence on record, come to the conclusion that the departmental inquiry which was held against the workman was legal and valid and the finding also based on legal evidence and ultimately the labour court upholding the order of dismissal, thereafter, in the writ petition, the High Court has said as under:

"Having perused the impugned order, we hold that the award of the labour court is well considered one, both in respect of conviction and punishment. However, purely on compassionate grounds, we direct the Corporation to appoint the petitioner as cleaner a fresh if he is willing within three months from the date of receipt of the order. "

In the said matter, the apex court held that after the decision of the High Court that once the High COurt had come to the conclusion that the order of dismissal of the first respondent was justified, it had no jurisdiction or power to issue the direction to grant appointment to the first respondent as a cleaner, on compassionate ground. It is one thing to find that the punishment is disproportionate to the indiscipline and to reduce the severity thereof...It is quite another to hold that the punishment was justified and yet to direct the employer to reemploy the delinquent employee. The High Court does not have jurisdiction to do so on compassionate grounds or otherwise.

Mr. Patel has also relied on the decision of Division Bench of this Court reported in 1993 (1) GLR 302 and has also relied upon the decision of the apex court reported in JT 1992 (4) SC 253. Mr. Patel has further submitted that in case of misappropriation, the labour court would be slow in interfering with the order of dismissal because one cannot expect the employer to retain a person who has misappropriated the fund while in service.

Judicial review is not an appeal but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court. The only touch stone which the Court can apply in its power of judicial review is whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence by applying these yard sticks.

Mr. Mishra, the learned advocate appearing for the workmen has, on the other hand, submitted that the concerned workman has been declared acquitted by the criminal court in respect of the very same subject matter. He has produced the decision of the learned Judicial Magistrate, First Class Anand. I have considered the said decision. The learned Magistrate has acquitted the accused while giving them benefit of doubt. As per the prosecution against the accused persons, muddamal article was found from the house of accused No. 7 Babu Shankar Adivasi and accused No. 6 Victor F. Parmar was not directly involved in the said offence. According to Mr. Mishra, the confession of the concerned workmen were obtained by the security officer by force and, therefore, same cannot be considered to be free confession. He has submitted that after considering the evidence on record he labour court has committed gross error in not granting reinstatement of the workman Shri Victor F. Parmar with back wages. He has further submitted that the labour court has also erred in not considering the decision of the criminal court wherein the workmen were declared acquitted and copy of the said as produced before the labour court vide Exh. 15. I have considered the submission of Mr. Mishra. It is a settled proposition of law that in case of acquittal given on the basis of benefit of doubt, the management is not bound to abide by such decision and the management is entitled to initiate departmental proceedings against the

concerned workman. The decision in criminal case cannot conclude the departmental proceedings. In the instant case, the petitioner Co. has initiated departmental proceedings against both the workmen, issued chargesheet and examined the necessary witnesses before the departmental authority and both the workmen had not challenged the legality, validity and propriety of the departmental inquiry before the labour court. On the contrary, a purshis was filed by both the workmen before the labour court to the effect that they are not challenging the legality and validity of the departmental inquiry. According to the record of the labour court, the workmen had given confession before the security officer because they were caught red handed for committing misconduct of theft. The labour court has also examined the issue as to whether the departmental inquiry is valid or not and considering the evidence led before the departmental authority, the labour court has come to the conclusion that the departmental inquiry which was conducted against the workman is legal and valid in case of Victor F. Parmar. According to my opinion, said findings of the labour court that the departmental inquiry is legal and valid is correct, legal and based on the evidence on record. The labour court has rightly concluded that the finding which has been recorded by the competent authority is true and correct finding. The labour court has also considered certain decisions of the apex court and other High Courts and ultimately come to the conclusion that looking to the misconduct in question , the punishment of dismissal is justified by the management and does not require any interference while exercising the power under section 11A of the ID Act. The labour court has also come to the conclusion that the punishment of dismissal is justified and there is no need to substitute any punishment while exercising power under section 11A of the ID Act and there is no justification pointed out by the workman which require interference in the punishment imposed by the management. Inspite of such finding, the labour court has granted Rs. 20,000/- to the workman by way of social rehabilitation and considering the social justice in its mind. According to my opinion, such direction given by the labour court is without any basis and also without any jurisdiction. It is a settled principle of law that the power which has been given to the labour court to substitute the punishment when the labour court is satisfied that the punishment is unjustified and disproportionate to the guilt established and the same is unreasonable, arbitrary and not proper. In the present case, it is not so. Though the labour court was satisfied that the order of punishment is not arbitrary,

unreasonable, disproportionate to the guilt established and that the employer is justified in passing such order, the labour court ought not to have given such directions against the employer while exercising such powers under section 11A of the ID Act. Therefore, the directions of the labour court are perverse, baseless and without jurisdiction. Therefore, considering the entire award as also the submissions made from both the advocates, I am of the opinion that in both the cases, the labour court has committed gross error which is apparent on the face of record in awarding Rs.20,000/- to the workman for social rehabilitation and social justice and the same is perverse and without jurisdiction and, therefore, same is required to be quashed and set aside by this COurt while exercising the power under Article 226 and/or 227 of the the Constitution of India.

For the reasons stated above, Special Civil Application No. 8761 of 1989 and 7293 of 1989 filed by the petitioner Company against the impugned judgment and award passed by the Labour Court in Reference (LCN) No. 677 of 1983 dated 9.11.89 and Reference No. 139 of 1983 dated 3.6.1989 are allowed. Said awards of the labour court are accordingly quashed and set aside. Rule is made absolute accordingly with no order as to costs.

Special Civil Application No. 6656of 1989 is dismissed. Rule is discharged with no order as to costs.

15.10.1999. (H.K.Rathod,J.)

Vyas